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Date: March 24, 2004 Planning Commission Meeting

Item No.

## MILPITAS PLANNING COMMISSION AGENDA REPORT

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Category: Public Hearings

Report Prepared by: Troy Fujimoto

Public Hearing: Yes:   X   No:       

Notices Mailed On: 3/12/04 Published On: 3/11/04 Posted On: 3/12/04

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**TITLE:** USE PERMIT NO. UP2004-5

Proposal: Request to allow a store selling used merchandise, such as thrift stores in the Mixed Use (MXD) zoning district.

Location: 4 North Abel Street

APN: 022-08-038

**RECOMMENDATION:** Approval with Conditions

Applicant: Patrick Lam, 2455 Autumnvale Drive #8, San Jose, CA 95131

Property Owner: Stefkate Associates, 104 Park Center Plaza, San Jose, CA 95113

Previous Action(s): "S" Zone approval

General Plan Designation: Mixed Use

Present Zoning: Mixed Use with a Transit Oriented Development Overlay (TOD) and a "S" Zone Overlay (MXD-TOD-S)

Existing Land Use: Multi-tenant building

Agenda Sent To: Applicant & Owner (same as above)

Attachments: Plans  
Letter of description from applicant dated, February 21, 2004

PJ#2365

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### BACKGROUND

In 1978, the Planning Commission approved an 'S' Zone Application for the development of a 6,700 square foot multi-tenant commercial building. Subsequent amendments to the 'S' Zone approval included a sign program and revisions to the sign program.

The site is located in a multi-tenant building, one of two buildings on the site. The site is located on the corner of Calaveras Boulevard and Abel Street. Surrounding uses include residential uses to the west, commercial uses to the north, the Calaveras Boulevard connector to Main Street to the east and commercial uses to the south.

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## THE APPLICATION

This application is submitted pursuant to Section 57 (Conditional Use Permit) and Section 38.03-1 (u) of the Zoning Ordinance. Section 38.03-1 (u) conditionally allows stores selling used merchandise, such as a thrift store in the Mixed Use (MXD) district.



*View looking south*

## PROJECT DESCRIPTION

The applicant is proposing to operate a consignment type of business. The applicant will accept goods from people that use internet auction houses. The applicant will hold the goods, prepare them for sale, publish them on the internet, and handle all of the transactions to complete the sale, including shipping of the product. The majority of the activity in the store will take place behind a interior wall, shielded from customer view.

## SITE/FLOOR PLAN LAYOUT

The applicant is proposing to locate in a 1,950 square foot tenant space. It will be in a middle tenant space within the building, which is located at the southern end of the site. The floor plan includes a front service/processing counter, which will include a waiting area and three customer service stations. A full height wall will separate activity at the front of the store from activities in the rear. The rear area will contain storage, offices, bathrooms and space for processing product.

## PARKING

The applicant will not be impacting existing on-site parking. The previous use was retail with a parking ratio of 1 space per 200 square feet. This use will have the same parking ratio, thus, parking will not be impacted by the proposed use.

## USE PERMIT FINDINGS

Any approval of a Use Permit or Use Permit Amendment requires that the Planning Commission make the following findings:

1. The proposed use is consistent with the Milpitas Zoning Ordinance.
2. The proposed use is consistent with the Milpitas General Plan.
3. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

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The following sections explain how these findings can be made for the proposed project, as conditioned.

### **Conformance with the General Plan**

The project conforms to the General Plan in that the use directly relates to:

**Implementing Policy 2.a-I-3**, which encourages economic pursuits, which will strengthen and promote development through stability and balance as this is a support type of business to the larger internet auction industry.

**Implementing Policy 2.a-I-6**, which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector, while this is related to the high tech industry, it is a new type of business that is currently underserved.

**Implementing Policy 2.a-I-7**, which provides opportunities to expand employment with local businesses, as this is a small new business.

### **Conformance with the Zoning Ordinance**

The proposed project is located in the Mixed Use zoning district with a Transit Oriented Development overlay (MXD-TOD). Part of this district's purpose is to "encourage a compatible mix of residential, retail, entertainment, office and commercial service uses within a framework of pedestrian oriented streetscape". The project, with recommended conditions of approval, complies with the City's zoning ordinance for the Mixed Use district, because it is retail type of use that is compatible and does not impact other uses in the area.

### **Neighborhood/Community Impact**

The proposed use is expected to have a positive community impact by providing a new use to the City. This is a new type of use that is underserved throughout the City. It will be the first request of its kind and ties into the burgeoning internet auction industry that has been steadily growing over the past couple of years.

This business will provide a convenience for residents of the City, as it is providing a service that some people may find cumbersome and inconvenient (using and selling product over the internet).

### **RECOMMENDATION**

Close the Public Hearing. Approve Use Permit No. UP2004-5, based on the Findings and Special Conditions of Approval listed below.

### **FINDINGS**

1. The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the state CEQA Guidelines.
2. The proposed consignment/thrift store is consistent with the City of Milpitas Zoning Ordinance and General Plan in terms of land use for Mixed Use zoning as it is a retail use that does not affect any neighboring uses.
3. As conditioned, the use will not be detrimental or injurious to the public health, safety, and general welfare to adjacent tenants or the surrounding community because all activities will occur within the building and the use has adequate existing parking.

### **SPECIAL CONDITIONS**

1. This Use Permit No. P-UP2004-5 approval is for a store selling used goods as a consignment business, as shown on approved plans dated March 24, 2004, except as may be otherwise modified by these conditions of approval. Modifications to the proposed use will require review and approval by the Planning Commission of an amendment to this Use Permit. (P)
2. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations. (P)
3. All roof-top equipment associated with this tenant space shall be shielded from view in a manner to the approval of the Planning Commission or its designee as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code. Prior to the issuance of any permit for any roof-top equipment which projects above the height of any existing parapet wall or screen, detailed architectural plans for the screening of this equipment and/or line-of-sight view analysis demonstrating that the equipment will not be visible from surrounding view points shall be reviewed and approved as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code, in order to assure the screening of said equipment is in keeping with and in the interest of good architectural design principles. (P)
4. All business activities shall occur within the building. (P)
5. If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
6. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
7. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for commercial services:
  - a. An adequate level of service for trash collection.
  - b. An adequate level of recycling collection.After the applicant has started its business, BFI commercial representative shall determine the adequacy of the solid waste level of services. If services found to be inadequate, the property owner/manager shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, x-264. (E)
8. The developer shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance by the Building Division. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)

(P) = Planning Division

(E) = Engineering Division

February 21, 2004

To Whom It May Concern:

The purpose of this letter is to inform the interested parties of the type of business that Ways Center, Inc. (Ways) plans to transact in the City of Milpitas.

Essentially, where people used to only be interested in buying items at retail locations, with the widespread success and popularity of eBay, the general population is looking for a convenient and accessible way to sell items on eBay as well.

Ways is an eBay drop-off company. We provide the local community with a hassle-free means of selling their items on eBay. The space will be used primarily as a retail storefront for people to walk in and bring items of value for us to sell and hold until we ship the item to the end buyer.

The entrance and customer area of the stores are extremely clean, well organized, and professional-looking, there is a qualified customer service representative to meet and greet every customer entering the store, and most importantly, the customer will have no idea what other items are at the location. Every other process of the business is separated by a floor to ceiling divider wall. When the customer enters the store, they will see a professional-looking counter, some nice chairs, a carpeted floor, a Ways staff member and three flat-screen computer monitors that are used to enter their orders.

For your information, the five major steps of what Ways does are below:

1. You brings in item to sell. The item is invoiced.
2. We photograph your items.
3. We list your items on eBay.
4. We package and ship the items.
5. We mail the customer their check.

The average time a customer spends in the store is less than ten minutes, and from beginning to end, their experience is of the utmost professionalism.

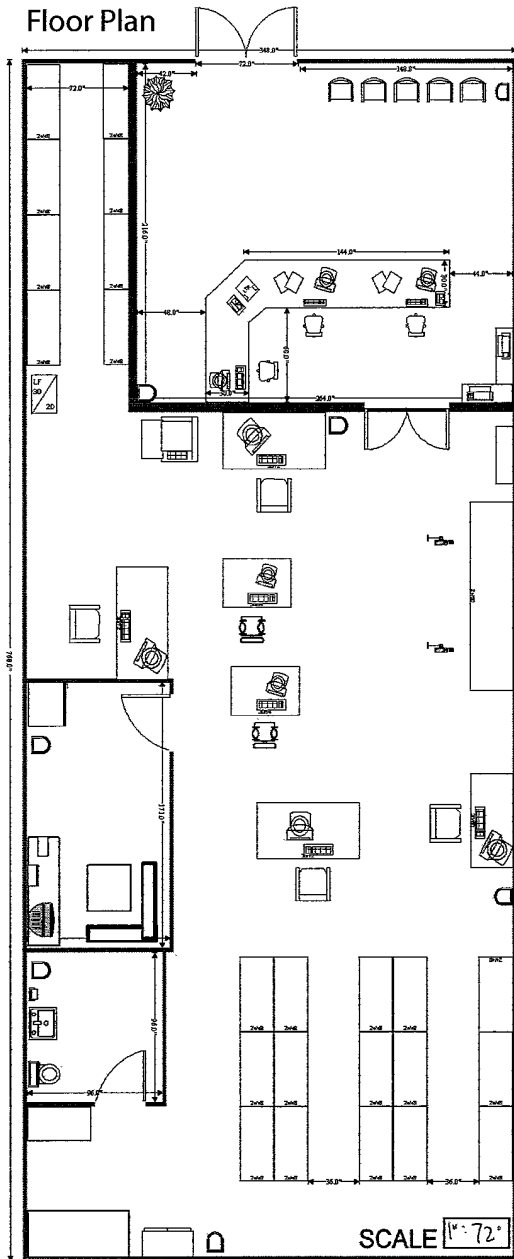
Please take all of the above into consideration when reviewing our case. We understand that this is still a new industry, but do believe that our customers and the city would want us to be in a retail location. We have an extremely well run and professional service, and only want to keep up the good name and reputation of the Milpitas business community.

Please contact us further for any other information you may require, and thank you for hearing our case.

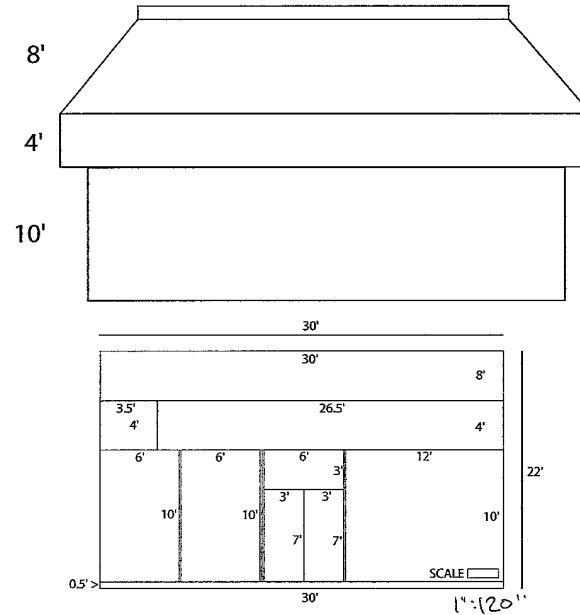
Sincerely,

Patrick Lam  
Founder  
Ways Center, Inc.  
[www.wayscenter.com](http://www.wayscenter.com)  
408-263-WAYS

Floor Plan



Architectural Elevations



Site Plan

**ways**  
408-263-9297

4 North Abel Street  
Milpitas Ca 95035

Vicinity Map

